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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA, SOUTHERN DIVISION**

9      CARL BONGIOVANNI, individual;

Case No.: 2:20-cv-01122-GMN-EJY

10     Plaintiff,

11     vs.

12     SAM'S WEST, INC. dba SAM'S CLUB #4983, a  
 foreign corporation; DOES I through XXX,  
 13    inclusive and ROE BUSINESS ENTITIES I  
 through XXX, inclusive,

14     Defendants.

**STIPULATION AND ORDER TO  
 EXTEND DISCOVERY DEADLINES  
 (SECOND REQUEST)**

16     Pursuant to LR 6-1 and LR 26-4, and for good cause shown, the parties, by and through  
 17    their respective counsel of record hereby stipulate and agree to and jointly move this Honorable  
 18    Court for an order to continue discovery by sixty (60) days as indicated below.

19    **I. INTRODUCTION AND PERTINENT BACKGROUND**

20    On August 16, 2018, Plaintiff purchased packaged beef from Defendant within Defendant's  
 21    premises. Defendant advertised the packaged beef as safe to eat and sold the beef to Plaintiff for  
 22    consumption. Upon consuming the beef, a day later, Plaintiff immediately felt ill. Plaintiff  
 23    presented to the hospital wherein he learned he suffered serious food poisoning due to salmonella.  
 24    Plaintiff soon thereafter learned there was a recall by Defendant of some beef products for concerns  
 25    of salmonella contamination. Plaintiff suffered serious and substantial injuries that required  
 26    immediate and subsequent medical attention. Plaintiff alleges that his injuries are a direct and  
 27    immediate result of the salmonella contamination. Plaintiff further alleges that the  
 28    contamination was caused by Defendant's negligence, carelessness, recklessness, and/or willful  
 29    violation of applicable laws and regulations.





1 proximate result of Defendant's negligence regarding the handling of the subject beef, including the  
 2 purchasing, inspecting, marketing and selling of the subject beef to Plaintiff.

3 Plaintiff filed his compliant in the District Court, Clark County, Nevada and Defendant  
 4 removed the lawsuit to the United States District Court, District of Nevada.

5 On November 23, 2020, Defendant's new Counsel Joshua Evan Swiger received approval to  
 6 practice in the United States District Court, District of Nevada.

7 Due to the transition of the attorneys for Defendant, and issues related to the Defendant's  
 8 business as a result of the busy period surrounding fall and winter holidays, Plaintiff's discovery  
 9 requests propounded on Defendant on October 29, 2020 remained unanswered. Plaintiff's Counsel  
 10 granted Defendant an extension to January 14, 2021. The Parties have agreed to the terms of  
 11 Defendant's protective order regarding requested documents and have provided them to Plaintiff.

12 The Parties are requesting an extension of the current discovery deadlines as they are  
 13 actively participating in settlement discussions.

14 Currently, the deadline to disclose expert witnesses is April 5, 2021 and the Parties do not  
 15 want to undergo costs to retain expert witnesses if this matter can settle.

16 Therefore, in an abundance of caution, the Parties are requesting an additional sixty-days to  
 17 complete discovery as detailed below.

## 18 II. DISCOVERY COMPLETED TO DATE

19 The parties have completed the following disclosures and discovery:

- 20 1. The Parties have served initial disclosures and supplements thereto.
- 21 2. The Parties propounded and have responded to discovery requests.
- 22 3. The Defendant has served subpoenas to Plaintiff's medical providers.
- 23 4. The Parties continue to supplement their initial disclosures.

## 24 III. SPECIFIC DISCOVERY REMAINING TO BE COMPLETED

- 25 1. Depositions of parties and/or witnesses;
- 26 2. Expert disclosures;
- 27 3. Depositions of treating physicians,

- 1           4.     Expert depositions;
- 2           5.     Additional written discovery as necessary;
- 3           6.     Disclosure of additional documents;
- 4           7.     Subpoena/Obtain additional documents as necessary; and
- 5           8.     The parties also anticipate that they may need to conduct other forms of discovery,
- 6     though not specifically delineated herein, and anticipate doing so only on an as-needed basis.

7 **IV. REASON & BASIS OF EXTENSION OF DISCOVERY DEADLINES REQUEST**

8 **Good Cause Exists to Extend Existing Discovery Deadlines**

9     Pursuant to FRCP 16(b), a movant must establish “good cause” for amending any  
 10 scheduling order, including the deadline for the close of discovery. *See Johnson v. Mammoth*  
 11 *Recreations, Inc.*, 975 F.2d 604, 608-09 (9<sup>th</sup> Cir. 1992); *see also* Local Rule 26-4; *Werbicky v.*  
 12 *Green Tree Servicing, LLC*, No. 2:12-CV-01567-JAD, 2014 WL 5470466, at \*1 (D. Nev. Oct. 27,  
 13 2014).

14       In determining whether “good cause” exists, the Court “primarily considers the diligence of  
 15 the party seeking the amendment.” *Johnson*, 975 F.2d at 609. “The district court may modify the  
 16 pretrial schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the  
 17 extension.’ *Id.* (quoting Fed. R. Civ. P. 16). The Court may also consider the prejudice the party  
 18 will suffer as a result of not obtaining that discovery, although such a factor is secondary to due  
 19 diligence. *Id.* The district court has discretion in making such a determination. *Id.*

20       Should the Court find “good cause” exists, it must then consider whether there is a showing  
 21 of excusable neglect as to why the deadline was not completed before it passed. *Nunez, supra.*  
 22 “Excusable neglect encompasses situations in which the failure to comply with a filing deadline is  
 23 attributable to negligence.” *Id.* (citing *Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9<sup>th</sup> Cir. 2009)). “There  
 24 are at least four factors in determining whether neglect is excusable: (1) the danger of prejudice to  
 25 the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the  
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1 reason for the delay; and (4) whether the movant acted in good faith.” *Id.* (citing **Bateman v. U.S. Postal Serv.**, 231 F.23d 1220, 1223-24 (9<sup>th</sup> Cir. 2000)). “The determination of whether neglect is excusable is ultimately an **equitable one**, taking account of all relevant circumstances surrounding the party’s omission.” *Id.* (citing **Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P’ship**, 507 U.S. 380, 395 (1993)) (emphasis added). Based on the foregoing conveyed reasons, and throughout this stipulation, the parties contend that the circumstances in this case meet each requirement for an order to continue discovery. An examination of the **Bateman** factors also weighs in favor of granting the parties’ motion to reopen and extend the discovery deadlines:

10           a. **The Dangers of Prejudice to the Opposing Party**

11           Here, the analysis is simple—the parties are stipulating to continue discovery to avoid  
 12 prejudice imposed upon them if the extension is denied. In fact, both parties submit they will be  
 13 equally prejudiced if the Court does not grant a continuation of the discovery deadlines in this case.  
 14

15           b. **The Length of the Delay and Its Potential Impact on the Proceedings**

16           Due to the reasons primarily discussed in Section (IV)(c), the parties request for an  
 17 additional 60 days to complete discovery. Furthermore, the parties do not believe that the request  
 18 will impact—let alone—delay a prospective trial date given the current pandemic climate and  
 19 unlikelihood of trial during the next few months.

20           c. **The Reason for the Delay**

21           The Parties are actively participating in settlement discussions and do not want to expend  
 22 additional costs to retain experts if this matter can settle.

23           d. **Whether Movants Acted in Good Faith**

24           Based on the foregoing, the parties’ position is that they have acted in good faith as all  
 25 parties have agreed to stipulate to continue the discovery deadlines that are necessary and  
 26 warranted. In the absence of a stipulation, they would equally prejudiced because they would be  
 27 unable to conduct the necessary discovery to both prosecute and defend the instant case.  
 28



1                   Finally, again, all parties participating in the litigation seek the discovery extension.  
 2 Therefore, the parties respectfully submit that as joint movants, who are actively engaged in the  
 3 discovery process, have acted in good faith in seeking the extension requested herein.

4                   In sum, the parties have diligently conducted discovery and are continuing to work  
 5 cooperatively to complete the remaining discovery in order to prepare for trial. Good cause exists  
 6 for modification of the current scheduling order to avoid prejudice to the parties.

7                   **V. CURRENT SCHEDULE TO COMPLETE REMAINING DISCOVERY:**

Motions to Amend or Add Parties:	03/05/2021
Initial Expert Disclosures:	04/05/2021
Rebuttal Expert Disclosure:	05/05/2021
Close of Discovery:	06/04/2021
Dispositive Motion Deadline:	07/05/2021
Joint Pre-Trial Order	08/05/2021

14                   **VI. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY**

Motions to Amend or Add Parties:	05/04/2021
Initial Expert Disclosures:	06/04/2021
Rebuttal Expert Disclosure:	07/06/2021
Close of Discovery:	08/03/2021
Dispositive Motion Deadline:	09/03/2021
Joint Pre-Trial Order	10/04/2021

21                   **VII. CURRENT TRIAL DATE:**

22                   No trial has been scheduled in this matter. A joint ~~proposed~~ pretrial order is due on August  
 23 5, 2021, or 30 days following this Court's ruling on any dispositive motions, if filed. The parties  
 24 seek additional time so that the same ~~proposed~~ pretrial order is due October 4, 2021 or 30 days after  
 25 this Court's ruling on dispositive motions.

26                   **VIII. REQUEST NUMBER:**

27                   This is the *Second* request for an extension of time to complete discovery.

1           Wherefore, the parties respectfully request that the Court grant this request to extend the  
2 discovery deadlines as outlined above.

3           **IT IS SO AGREED.**

4           Dated this 15<sup>th</sup> day of March 2021.

Dated this 16<sup>th</sup> day of March 2021.

5           **LADAH LAW FIRM**

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7           **WEINBERG, WHEELER, HUDGINS, GUNN**  
**& DIAL, LLC**

8           /s/ *Ramzy P. Lada*

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1           /s/ *Joshua E. Swiger*

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*Sam's West, Inc., d/b/a Sam's Club #4983*

**ORDER**

Pursuant to stipulation by the parties and for good cause shown, the deadlines and discovery schedule in this case are extended and continued as follows:

Motions to Amend or Add Parties:           05/04/2021  
Initial Expert Disclosures:                  06/04/2021  
Rebuttal Expert Disclosure:                 07/06/2021  
Close of Discovery:                          08/03/2021  
Dispositive Motion Deadline:               09/03/2021  
Joint Pre-Trial Order                         10/04/2021

**IT IS SO ORDERED.**

DATED March 17, 2021.

*Elayna J. Youchah*  
ELAYNA J. YOUCRAH  
UNITED STATES MAGISTRATE JUDGE